APPENDIX A

SUPREME COURT OF ILLINOIS
Clerk of the Court
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

October 6, 2004

Mr. J. Grant Kennedy
Law offices of J. Grant Kennedy
141 Duesenberg Drive, Suite 4
Westlake Village, CA 91362-3489

No. 98803—Bicycle Components Express, Inc., etc., petitioner, v. Brunswick Corporation et al., respondents. Leave to appeal, Appellant Court, Second District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 2004.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

[Filed April 26, 2004]

No. 01-L-1057

BICYCLE COMPONENTS EXPRESS, INC., d/b/a SOLEUS,
Plaintiff-Appellant,

v.

BRUNSWICK CORPORATION, BRUNSWICK BICYCLE,
and DOES 1-50.
Defendants-Appellees.

Appeal from the Circuit Court of Lake County

RULE 23 ORDER

Honorable JOHN R. GOSHGARIAN, *Judge*, Presiding

Plaintiff, Bicycle Components Express, Inc., d/b/a Soeus (BCE), appeals the dismissal of its complaint against defendant, Brunswick Corporation, Brunswick Bicycle, and Does 1-50 (Brunswick), seeking damages after Brunswick stopped manufacturing bicycles and stopped ordering parts from BCE. We affirm.

The following facts are taken from the pleadings and attached documents. On October 10, 2002, BCE filed its second amended complaint (complaint) against Brunswick asserting causes of action for breach of contract, equitable estoppel, "quantum meruit and/or substantial performance," and "fraud

and deceit." The complaint alleged that Brunswick promised to purchase bicycle parts from BCE if BCE would build a factory in Mexico. BCE also alleged that Brunswick made oral representations to the same effect and that BCE reasonably relied on the representations.

BCE's complaint alleged that sometime in the mid 1990s, Brunswick, headquartered in Lake Forest, Illinois, bought Roadmaster Bicycle and formed a bicycle division. Brunswick operated bicycle manufacturing facilities in Illinois and Mexico. In 1998 and 1999, representatives from BCE and Brunswick met and discussed BCE producing bicycle parts for Brunswick's Mexican facility. As a result of these discussions, the parties entered into an oral agreement on or about January 20, 1999.

According to BCE the parties agreed:

> "BCE would immediately build an operation in Mexico that would have the capacity and ability to supply bicycle parts to Brunswick in amount, quality, and per the specifications and scheduling needs of Brunswick bicycle production forecasted production levels over the next three years. As part of the agreement, Brunswick promised to be a "vendor-partner" with BCE and to buy parts from BCE for bicycle production schedules for 1999 in the amount of 1.2 million, for 2000, 1.5 million and for 2001 parts for 1.8 million bikes to be produced. The price paid would be established so as to justify the start up costs, return to capital and a reasonable profit for the investment required to build the Mexican production operation."

BCE also alleged that the parties "agreed that the duration of the agreement was that BCE would be a 'vendor-partner' for a minimum of three years and there after as long as price and quality of BCE were competitive." Because the bicycle parts could have been produced cheaper in BCE's Asia facility, BCE "required assurances from Brunswick" before

starting production in Mexico. BCE alleged that Brunswick orally represented to BCE that, if BCE built a manufacturing facility in Mexico, "Brunswick promised to be manufacturing in Mexico for at least the next three years" and "promised to buy the level parts for 1999, 2000 and 2001."

According to BCE's complaint in February or March 1999, it hired and trained a manager to work at a new factory in Mexico and built manufacturing facilities in Saltillo and Ramos Arizpe, Mexico to meet Brunswick's needs. In May and July 1999, a Brunswick representative viewed the proposed BCE factory in Mexico. On August 3, 1999, a Brunswick employee, Kevin Kabbes, "was representing to BCE and others that Brunswick had a 15 million dollar fund to help vendors (Asian) to set up in Mexico over the next three years." By September 1999, BCE's Mexican facilities were producing parts for Brunswick, and Brunswick made payments to BCE for parts it had ordered.

In addition, BCE alleged that at various times Brunswick management (its chief executive officer, president, chief financial officer, finance committee, and board of directors) considered whether Brunswick should stop manufacturing bicycles. As early as June 1998, Brunswick was "evaluating" "contingency plans" in case income was not as expected. This contingency plan included closing its bicycle division.

On January 13, 2000, Brunswick announced that it would cease its production of bicycles in North America, and it stopped its production bicycles on June 27, 2000, exiting the bicycle business. Nevertheless, through January 12, 2000, Brunswick representatives were "still attempting to recruit suppliers to come to Mexico" and promising a long-term commitment.

BCE alleged that Brunswick's upper management allowed its representatives to "disseminate false representations" regarding its intentions in Mexico. BCE's Mexican factory had

no other purpose but to meet Brunswick's needs and, as a result of Brunswick's unexpected halt of bicycle production, BCE suffered losses as follows: $270,000 net loss in the value of its Mexican properties; $835,000 net loss in the value of its machinery and equipment; approximately $3.199 million operating losses from September 1999 to June 2000; and $3.321 million in lost anticipated profits for three-years.

On January 14, 2003, the trial court granted Brunswick's motion to dismiss all counts of BCE's complaint. The court based its 2—619(a)(7) dismissal of the breach of contract claim on the statute of frauds. 735 ILCS 55/2–619(a)(7) (West 2000). The remaining claims were dismissed based on section 2—615 for failure to state a cause of action, 735 ILCS 5/2–615 (West 2000). In dismissing the case, the trial court stated:

> "I think [BCE] pled himself right into the Statute of Frauds. That's the problem that I have with it. And the question is[,] is this full performance, and I have some real reservations about saying that it is, because as I reviewed that, it was a long-term relationship, if you want to call it that, and it including building parts.
>
> So, I'll grant the motion as to the fraud and the equitable estoppel. I think there is not enough specific facts to support fraud. And future conduct is not sufficient to show any misrepresentation. You can't justifiably rely on such future representations in Illinois. So I'll grant the motions."

This appeal followed.

On appeal, BCE argues that the trial court erred by dismissing its breach of oral contract claim. BCE contends that the statute of frauds does not bar enforcement of the alleged contract because it was reasonably capable of being performed within three years and BCE fully performed its obligation under the contract.

A trial court must grant a section 2—619(a)(7) motion to dismiss based upon the Statute of Frauds or "other affirmative matter" defeating the claim, if, after reviewing all the pleadings and supporting documents in the light most favorable to the plaintiff, the plaintiff can prove no set of facts to support a cause of action. *In re Chicago Flood Litigation*, 176 Ill.2d 179, 189 (1997). The trial court must take all well-pleaded facts in the complaint and attached exhibits as true and construe from them all reasonable inferences in the plaintiffs favor. *Prodromos v. Howard Savings Bank*, 295 Ill. App. 3d 470, 474 (1998). The trial court must also consider whether the defendant presented facts constituting an affirmative defense which could defeat the plaintiffs cause of action. *Prodromos*, 295 Ill. App. 3d at 474. We review a section 2—619(a)(7) motion to dismiss de novo. *Prodromos*, 295 Ill. App. 3d at 474.

The Statute of Frauds states that:

> "No action shall be brought * * * upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." 740 ILCS 80/1 (West 2000).

In other words, an oral agreement is barred from enforcement by the statute of frauds if "it anticipates a relationship of long duration—certainly longer than one year." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 490 (1997).

BCE argues that, pursuant to the alleged oral agreement, made on or about January 20, 1999, Brunswick promised to offer to buy bicycle parts from BCE's Mexico factory, for 4.5 million bicycles Brunswick planned to make from 1999 to 2001. BCE argues that the agreement was capable of perfor-

mance within one year because BCE built the factory within one year and Brunswick could have ordered all the parts it would have needed within one year of the agreement date. However, we fail to understand how placement of an order would constitute complete performance of the agreement. BCE alleged in its second amended complaint that "the duration of the agreement was that BCE would be a 'vendor-partner' for a minimum of three years." In this case, we need not speculate about the likelihood or possibility of Brunswick placing an order within any particular time period because the alleged agreement contained a specific date by which it would be considered fully performed. *See Sherwin v. Ault*, 219 Ill. App. 3d 213, 217 (1991), Thus, the alleged oral agreement falls within the statute of frauds and is unenforceable, and the trial court properly dismissed BCE's claim alleging breach of contract based on section 2—619(a)(7) of the Code of Civil Procedure. 735 ILCS 2—619(a)(7) (West 2002).

BCE also argues that the agreement is outside the statute of frauds because BCE fully performed its obligations under the agreement. BCE contends that by building a factory in Mexico it fully performed its obligation under the agreement. It is well settled that, where one party completely performs a contract, the contract is enforceable and the statute of frauds may not be used as a defense to enforcement. *McInerney*, 176 I11.2d at 492. This narrow exception to the Statute of Frauds exists to prevent a party from avoiding its obligations under a contract when the other party fully performs all his obligations in reasonable reliance on the contract. *Greenberger, Krauss & Tenenbaum, v. Catalfo*, 293 Ill. App.3d 88, 96 (1997).

However, in this case, even after reading the complaint in a light most favorable to BCE, we fail to understand how the building of a factory conferred a benefit to Brunswick. Until BCE manufactured the parts Brunswick needed, the factory in

Mexico conferred no benefit on Brunswick. Any alleged contract must have obligated BCE to do more than build a factory in Mexico. Accordingly, BCE's complaint does not sufficiently establish full performance.

BCE argues, for the first time on appeal, that the alleged oral agreement was an option contract. BCE contends that, in exchange for building its factory in Mexico, BCE obtained an option to sell parts to Brunswick. Because this theory was not raised in the trial court below and is not contained in the pleadings, it is waived. *See West Suburban Bank v. Attorneys' Title Insurance Fund, Inc.*, 326 Ill. App. 3d 502, 510 (2001). Absent waiver, BCE's argument fails because its complaint failed to allege specific facts to establish the existence of an options contract capable of enforcement.

Next, BCE argues that the trial court erred by dismissing its claim for fraudulent concealment based on section 2—615 of the Code. 735 ILCS 5/2—615 (West 2000). BCE asserts that Brunswick should be estoppel from asserting a defense under the statute of frauds because Brunswick failed to tell BCE that it intended to stop manufacturing bicycles. Brunswick argues that it had no duty to disclose its potential plans.

To establish a claim for fraudulent concealment, a plaintiff must prove that the defendant was under a duty to disclose the fact concealed. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 500 (1996). A duty to disclose may arise out of a fiduciary or confidential relationship. *Connick*, 174 Ill. 2d at 500. A confidential relationship exists when a defendant is in a position of "influence and superiority" over the plaintiff or is dominant because of superior knowledge of the matter or from a plaintiff's weakness, dependence, or trust in a defendant. *Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 657 (2001).

In this case, BCE argues that its relationship with Brunswick entailed such a disparity of control, bargaining position,

influence, and dependency that Brunswick owed a duty to disclose to BCE its intention or deliberation of stopping its manufacture of bicycles. We do not find this argument persuasive. BCE's' complaint contains nothing more than conclusory allegations that it had a fiduciary or confidential relationship with Brunswick. BCE has failed to allege sufficient facts to establish a fiduciary or confidential relationship with Brunswick. BCE and Brunswick are both businesses that allegedly negotiated an agreement wherein BCE agreed to sell Brunswick bicycle parts at competitive prices. Such businesses are presumed to have negotiated their alleged agreement at arms length. *See Midwest Decks, Inc. v. Butler & Baretz Acquisitions, Inc.*, 272 Ill. App. 3d 370, 380-81 (1995). In fact BCE alleged in its second amended complaint that future prices were to be negotiated between the parties. Further, BCE failed to allege that Brunswick agreed to exercise judgment on BCE's behalf or to act as BCE's fiduciary. BCE' second amended complaint alleges no specific facts supporting their assertions of trust, confidence, superior knowledge, influence, or dominance. BCE's conclusory allegations, even when viewed in the light most favorable to BCE, do not give rise to an inference of the significant dominance and superiority which is the touchstone of a fiduciary or confidential relationship. *See Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 22 (1995). Because BCE has not alleged facts that establish that Brunswick owed a duty to disclose its potential plan to stop its manufacture of bicycles, BCE's fraudulent concealment claim was properly dismissed.

BCE also argues that the facts alleged in its second amended complaint support a claim for fraudulent misrepresentation. To state a claim for fraudulent misrepresentation, a plaintiff must allege, *inter alia*, that the defendant made a false statement of material fact knowing or believing that such statement was false. *Connick*, 174 Ill. 2d at 496. A claim of fraud must contain specific allegations of facts from which fraud is necessary or probable inference, including

what misrepresentations were made, when they were made, who made the misrepresentations, and to whom they were made. *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 419-20 (2003). BCE's complaint does not meet this standard. It alleges:

> "That on or about August 3, 1999 Brunswick Kevin Kabbes, was representing to BCE and others that Brunswick had a 15 million dollar fund to help vendors (Asian) to set up in Mexico over the next three years."

However, BCE's complaint does not allege that Kabbes knew or believed the statement was untrue on August 3, 1999, or that BCE relied on this statement. According to BCE's complaint, its Mexican factory was being built in July 1999 and started producing parts in September 1999. Therefore, BCE could not have relied on Kabbes' August 1999 statement, since it had already moved its factory to Mexico at that time. Thus, BCE failed to state a cause of action for fraudulent misrepresentation.

Next, BCE argues that the facts alleged in its second amended complaint support a claim for equitable estoppel. To claim equitable estoppel and avoid the statute of frauds BCE had to allege, in part, that BCE relied upon a misrepresentation or concealment of a material fact made by Brunswick. *See McInerney.*, 176 I11.2d at 492. However, BCE failed to allege with specificity that Brunswick made any false misrepresentation prior to the alleged oral agreement or prior to BCE's decision to move its factory to Mexico. In the absence of such fraud or misrepresentation, BCE must be said to have acted solely upon its own judgment and at its own risk. *See Ozier v. Haines*, 411 Ill, 160, 165 (1952); *McInerney*, 176 Ill.2d at 493. Accordingly, BCE failed to sufficiently allege the facts necessary to equitably estop Brunswick from asserting its statute of frauds defense.

In addition, BCE argues that it stated a claim for promissory estoppel. However, BCE ignores well settled law that

promissory estoppel does not bar application of the statute of frauds in Illinois. *See McInerney*, 176 Ill.2d at 492. Accordingly, the trial court properly dismissed this claim.

The judgment of the circuit court of Lake County is affirmed.

Affirmed.

McLAREN, J., with BYRNE and KAPALA, JJ., concurring.

APPENDIX C

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

[Oct. 10, 2002]

Gen. No. 01 L 1057

BICYCLE COMPONENTS EXPRESS, INC., d/b/a SOLEUS,
Plaintiffs,

v.

BRUNSWICK CORPORATION,
BRUNSWICK BICYCLE, and DOES 1-50,
Defendants.

JURY TRIAL REQUESTED

SECOND AMENDED CIVIL COMPLAINT AT LAW FOR

1. Breach of Contract
2. Equitable Estoppel
3. Quantum Merruit and/or Substantial Performance
4. Fraud and deceit

NOW COMES the Plaintiff Bicycle Components Express, Inc. (Hereafter "BCE") a Corporation duly licensed in the State of California and doing business as SOLEUS, by and through it's attorney, J. Grant Kennedy, who has been granted permission to appear *pro hac vice* in this action and in association Illinois attorney Steven Leahy, and complaining of the

Defendant Brunswick Bicycle Corporation, a Delaware corporation d.b.a. Brunswick Bicycle and Does 1-50 Inclusive, states as follows:

1. Plaintiff BCE is a Corporation duly licensed in the State of California and doing business as SOLEUS.

2. Defendant Brunswick Corporation (Hereafter "Brunswick") is a Delaware corporation headquartered in Lake Forest, Illinois.

3. Defendant Brunswick Bicycle was a division, operation, or other unit of the recreation operations of Brunswick as of, or at about the date Brunswick purchased Roadmaster Bicycle, which occurred in approximately the early to mid 1990's. The exact form, classification and/or type of business entity, if any, of the bicycle operations within Brunswick is unknown.

4. The true names and capacities, whether individual, corporate, associate or otherwise of defendants named herein as DOES 1-50, inclusive, are unknown to plaintiffs who therefore sues said defendants by such fictitious names, and plaintiff will amend this complaint to show their true names and capacities when the same have been ascertained. On information and belief, each DOE defendant is in some manner responsible, liable and obligated to plaintiffs in connection with the occurrences, transactions, and obligations alleged herein.

5. The matter in controversy exceeds the sum of $50,001 such that this action is properly placed before this Court and Illinois Supreme Court Rule 222 is non-applicable.

6. These initial six paragraphs are incorporated by reference into each cause of action in this amended complaint as though set out in full.

Action for Breach of Contract

(As against Brunswick Corporation d.b.a
Brunswick Bicycle and Does 1-50 Inclusive)

7. Brunswick, through it bicycle division and the authorized agent's representatives David Lumley, Monte Sharma, Howard Atkinson entered into an a oral contract with BCE on or about January 20th, 1999 whereby BCE would immediately build an operation in Mexico that would have the capacity and ability to supply bicycle parts to Brunswick in amount, quality, and per the specifications and scheduling needs of Brunswick bicycle production forecasted productions levels over the next three years. As part of the agreement, Brunswick promised to be a "vendor-partner" with BCE and to buy parts from BCE for bicycle production schedules for 1999 in the amount of 1.2 million, for 2000, 1.5 million and for 2001 parts for 1.8 million bikes to be produced. The price paid would be established so as to justify the start up costs, return to capital and a reasonable profit for the investment required to build the Mexican production operation.

8. The universe of bicycle parts to be produced under the agreement involved suspension forks, derailers and saddles.

9. The specifications for the parts that would be needed and how the part specifications for future parts would be determined and put into production in the "vendor-partnership" was agreed to by BCE and Brunswick who had a history of working relationship between BCE and key individuals at Brunswick who had for.rerly been with Roadmaster and whom had worked with BCE in the past.

10. Mr. Chu and Mr. Cunnane for BCE had regular and frequent dealings with Bob Guinn (Brunswick Corp. Director of Materials at Brunswick Corporation bicycle division, his duties included responsibility for developing business relationships with entities such as BCE that could source com-

ponent parts to the Brunswick Mexican bicycle operation and he was responsible for purchasing, inbound freight and warehousing of component bicycle parts and finished goods for all Brunswick bicycle plants, including ones in Olney, Illinois and Mexico and he was also the boss of Kevin Kabbes); Kevin Kabbes (purchasing manager, responsible for purchasing bicycle components parts for Brunswick North American plants including the one in Olney, Illinois and the Mexican facility); and, Howard Atkenson who was the plant of manager of the Roadmaster operations. Roadmaster had been purchased by Brunswick and these individuals remained with Brunswick at the factory located in Olney, Illinois. When Roadmaster was purchased, Howard Atkenson became the General Manager of the Mexican operations of Brunswick, located in Rosentel, Mexico. This was the facility where Brunswick began manufacturing bicycles around February 1997 in Mexico and it was the plant that BCE was to supply.

11. There were approximately 12-15 meetings during 1998 and 1999 wherein issues regarding the agreement were discussed. These involved BCE through Pat Cunnane and/or Simon Chu and for Brunswick, Robert Guinn ; Kevin Kabbes, Jim Coninx, (vice president of finance in the bicycle division of Brunswick Corporation from January 1999 until December 29, 2000); and Howard Atkenson, the General Manager of the Mexican operations of Brunswick located in Rosentel, Mexico. In the December 15 meeting, other participants may have been Steve Reeds, the bicycle division purchasing manager for finished goods, Monty Sharma, then vice president of operations for Brunswick Bicycles, and Ed Miyashita, then its product manager.

12. These executives, employees and agents of Brunswick's bicycle division, met, called, discussed, wrote, and otherwise communicated with Pat Cunnane and Simon Chu to come to an agreement in January, 1999 when it was agreed to be a "vender partnership" agreement because of the nature of

the bicycle industry and Brunswick's needs. As such, the "vender partner" agreement included an agreement to have a working relationship based upon flexibility as to specifics of specifications, price and scheduling so that the needs of Brunswick could be met.

13. Most of those meetings took place at the Brunswick facility in Olney., Illinois, but some of them also took place at Brunswick's offices in Vernon Hills, Illinois, at various bicycle trade shows in Taipei, Taiwan, Las Vegas, Nevada, at Pat Cunnanes' office in Glenside, Pennsylvania and in Mexico. At those meetings, these individuals discussed subjects such as what parts could be produced, the time frame for production, and other usual topics related to the "vendor partnership" agreement.

14. Because Brunswick had a substantial long-term commitment to Wal-mart, Inc. to supply approximately two million bikes per year the exact specifications for the agreed period of production was typically not known in advance, and because the exact specifications were determined on short lead times, the price was not known in advance. The relationship, the trust and the specifications and requirements for the building of the Mexican operation to supply parts to be needed by Brunswick on short lead times was worked out in the multiple meetings between BCE and Brunswick. In that the commitment was substantial by BCE to meet the needs of Brunswick and BCE had to perform first, by expending considerable sums to build the operation, Brunswick promised the "vender-partnership" to reflect that it was more than just a supplier relationship and that BCE could expect a special relationship of trust and that the undertaking by BCE would be compensated for by Brunswick agreeing to purchase from BCE the parts needed for the production demands of 1999 (1.2 million bikes), 2000 (1.5 million bikes), and 2001 (1.8 million bikes) at a price that was agreed to be set at a higher amount than competitive with China in order to compensate

for start up costs, return to capital and profit for the first three years, It was agreed that the price would decline for each of the three years as initial costs were recovered. After the first three years, it was agreed that BCE would still have the "vendor-partner" relationship with preference on purchasing, if the product supplied by BCE was competitive as to price and quality. It was agreed that like any partnership not every detail could be worked out in advance, so it was promised by Brunswick that BCE could rely upon and trust Brunswick, and that after BCE built the operation and BCE could supply the parts on the short lead times, any further details could be worked out by the "vendor-partners". It was agreed that Brunswick would purchase sufficient parts at a price from BCE such as to justify the investment of time, energy and capital to build the Mexican operation to meet the specific needs of Brunswick and that at a minimum the amount purchased would be that needed to supply 1.2 million bikes in 1999, 1.5 million bikes in 2000 and 1.8 million bikes in 2001.

15. The reason specifications and prices could not be set in advance was due to the commitment and relationship to Wal-mart, Inc which was the major asset for Brunswick in the purchase of Roadmaster and in the production in the Mexico operation. The importance of the Wal-mart, Inc connection to Roadmaster/Brunswick and the ability to produce on short lead times is seen in the fact that the formulation of good will was the major asset in the purchase of Roadmaster, Inc. The price paid for Roadmaster, because of the "good will", was over $190,000,000.00 even though Roadmaster, Inc was on the verge of bankruptcy and subsequently filed for bankruptcy. It was the policy of Wal-mart, Inc. that the shortest lead times regarding production had to be utilized by Brunswick so that customer tastes and trends could be maximized for such items such as finishes (black, green, metallic etc), designs (there are many aerodynamic design regarding frames), and materials (Chrome, aluminum, alloy, titanium, etc).

16. Brunswick therefor had a demand for a supplier who could produce to meet the short lead times and changing spec environment dictated by the industry and Wal-mart, Inc. and Brunswick, but production supply also had to come from Mexico so that Brunswick could save millions of dollars under the North American Free Trade Agreement (hereafter "NAFTA") and JIT (Just in Time) production principles could be employed to save substantial amounts interest, warehouse and other carrying costs and to give Brunswick the benefits of more cost-effective production, achieving a more efficient end customer response by facilitating changes to production operating lines and volumes according to customer demand, planning short and long range resources with greater precision, greater efficiency in planning changes in raw material requirements, reduction of work-in-process, ability to expedite special production requirements, avoid processing delays through inventory availability checks on in process parts orders, manage bottlenecks in the manufacturing process by reallocating resources when necessary and increased quality.

17. It was known by both parties to the agreement that the same parts could be produced in Asia and imported cheaper than building a manufacturing facility in Mexico. Both parties were aware of competition pressures from Asia over the several years before the agreement was reached. As a result, BCE required assurances from Brunswick sufficient to warrant the undertaking of several millions of dollars for a production facility in Mexico. In response, Brunswick represented through the above-identified individuals that Brunswick is a bigger, stronger company than Roadmaster used to be and that Brunswick was financially committed to dealing with the economic challenges of a global economy such that Brunswick promised to be manufacturing in Mexico for at least the next three years, that Brunswick had long-term commitment to manufacturing, in Mexico (defined by Brunswick individuals identified above, to mean at least three

years) and that Brunswick promised to buy the level of parts needed for 1999, 2000 and 2001 through purchase orders to be issued by Brunswick to BCE if BCE were to build the Mexican operation. It was agreed that the purchase orders were to be issued for purposes of scheduling and identifying price and specifications but that the "vender-partnership" obligated Brunswick to purchase at the minimum the amount of product needed for 1.2 million bikes in 1999, 1.5 million bikes in 2000 and 1.8 million bikes in 2001 at prices consistent with the return of start up costs, capital, and profit.

18. The first price set under the agreement was for the suspension fork and that was $6.00 for Stage one, $5.85 for stage two; approximate $5.65 for stage three; and $5.50 for stage four. On April 16, 1999 saddles prices were agreed to at a price of $.90 per saddle with production starting at 2,000 units per day and increasing to 5,000 per day.

19. It was agreed by the parties that the duration of the agreement was that BCE would be a "vendor-partner" for a minimum of three years and there after as long as price and quality of BCE were competitive. The time of performance by Brunswick was left open to the dynamics of the short lead times of the market and scheduling needs of Brunswick. Brunswick could have placed a purchase order for the 1.2 million bikes for 1999, the 1.5 million bikes in 2000 and the 1.8 million bikes within the first year of the agreement. It was furthermore agreed between the parties that BCE would limit its sales and marketing efforts to the parts it was to make for Brunswick until the complete requirements of Brunswick were satisfied.

20. BCE did in fact invest in a manufacturing plant in Saltillo, Mexico and built a new factory in Romos Arizpe, Mexico. The plant had adequate manufacturing, warehousing and administrative facilities to meet the production requirement as outlined by Brunswick the series of meetings held between Brunswick and BCE. As agreed to, BCE did use its

expertise and capital to build in Mexico the type of operation for the part production found in Taiwan. The plant capacity and operation was to supply the parts needed to be delivered to Brunswick.

21. The agreement to manufacturer and supply Brunswick was in place and being fulfilled by BCE to Brunswick's satisfaction until January 13, 2000, when Brunswick, without any warning, announced that it was planning to cease manufacturing bicycles in North America. Defendant Brunswick breached the "vendor-partnership" agreement by closing their operations and selling their business instead of fulfilling their duties under the vendor-partnership agreement to purchase products from the plaintiff as described above.

22. On June 27, 2000, it was announced that Brunswick would exit the bicycle business.

23. BCE did everything BCE was to do under the agreement except as may have been excused by the conduct of the Defendant

24. As a result of the breach of the agreement and the reliance on the promises of the Defendant the Plaintiff has suffered damages.

25. BCE has calculated their loss as follows: For the land and building (estimate based on a current sale price of $1,000,000.00—cost of land and improvements $1,240,000.00 and an anticipated sales commission cost of about $30,000 for a total loss on building and land of $270,000.00; the net value of machinery, equipment, tools and die if sold would result in a loss of about $853,000.00; BCE out of pocket operating loss for the period of September 1999 to June 2000. This is not a true cost analysis, rather just a summation of the information—probably on the low side. The cumulative loss of BCE as of June 30, 2000 would be approximately $3,199,323.00. In addition, BCE did not recover the normal profit that should have been earned on the agreement of $1,107,000.00 per year

or $3,321,000.00 had Brunswick placed all of the purchase orders in the first year. That loss would total 3,321,000.00. The total loss to BCE is estimated to be $7,643,323.00.

Second Cause of Action for Equitable Estoppel
(As against Brunswick Corporation and Does 1-50)

26. Paragraphs 1-6 and 7-25 are incorporated hereat as though set out in full, and it is further alleged that in addition to the representations and agreement stated in the first cause of action and incorporated hereat that Brunswick was aware that BCE was relying upon the representations by Brunswick Bicycle Division individuals identified herein. This was known by Brunswick as demonstrated by their knowledge of the acts of BCE in furtherance and in their reliance on the promises of Brunswick, as identified herein, by BCE which included, but is not limited to, Brunswick setting their production needs according to BCE, meaning if BCE did not supply, Brunswick manufacturing would stop. Additionally, they knew that Tom Greb was hired about February or March 1999, to manage the Mexican operation to supply the parts to Brunswick. That Mr. Greb went to a China plant to train and to plan and organize the transition of equipment and materi als to begin assembly in Mexico of the first item for production, the suspension fork. That Brunswick was advised by Pat Cunnane on March 18, 1999, specifically to Bob Guinn and Kevin Kabbes that Mr. Greb was traveling to China for training and to plan the transition of the equipment and materials to begin assembly in Mexico and that production was to reach 5,000 per day with 2 lines working 2 shifts and that there was a four stage plan for assembly and manufactur ing of the suspension. The prices and the time for the parts, production runs and begins were all communicated both orally and in writing on or about the same date of March 18, 1999 to Brunswick representatives, Bob Guinn and Kevin Kabbes.

27. On or about March 22, 1999 Brunswick representatives Kevin Kabbes and Ulysses Serrano visited the Mexican operations of BCE and were shown the detailed plans relating to production capacity and quality assurance capacity regarding the product that was to be provided to Brunswick and they were also shown potential land sites for future factory locations to meet the needs of Brunswick.

28. That on March 25, 1999 Allen Cycle and Keven Kabbes worked on fork specs that would be manufactured and supplied by BCE to Brunswick.

29. That on March 29, 1999 quality systems and an operations plan were established, with Brunswick approving the plan

30. That on April 10, 1999 there was a meeting in Taiwan among Monte Sharma, Kevin Kabbes, Bob Guinn, Richard Whittenburg, Ben Edmonds, Howard Atkinson, Simon Chu, Chang Chung His, Tom Greb and Pat Cunnane. And, there was also a meeting in Simon Chu's room 1261 at 10:00 a.m. with Pat Cunnane, Simon Chu, Monte Sharma, Kevin Kabbes, and Ben Edmunds discussing the agreement such that BCE would be manufacturing for Brunswick in Mexico.

31. That on May 27, 1999 there was a show in Saltillo. Present were Howard Atkinson, Bob Guinn and Kevin Kabbes, Teresa Kamiya, Tom Greb, Pat Cunnane, Simon Chu, Alfredo Gallagos and the site to manufacture for Brunswick was accepted by Brunswick.

32. That on July 12, 1999 Bob Guinn of Brunswick visited the BCE manufacturing plant in Mexico.

33. That on or about August 3, 1999, Brunswick. Kevin Kabbes, was representing to BCE and others that Brunswick had a 15 million dollar fund to help vendors (Asian) to set up in Mexico over the next three years.

34. That on or about September 12, 1999 Brunswick agreed to advance payment to BCE on goods being manufactured for Brunswick.

35. That on or about September 23, 1999, Bob Guinn in accounting agreed to accelerate payments to BCE.

36. That on October 21, 1999 Brunswick was still giving it's "Come to Mexico" presentation in Taiwan even though Brunswick had already determined, analyzed and concluded that they were going to cease manufacturing in Mexico.

37. It is furthermore alleged that Brunswick, through the individuals in the Bicycle Division who had the aforementioned meeting, discussions and agreements, misrepresented to BCE the level of commitment that Brunswick had to manufacturing in Mexico. Whereas individuals had indicated there was a 15 million dollar fund to help others come to Mexico, in truth, there was not. Whereas it was represented that Brunswick had long-term commitment to Mexico of at least three years, as defined by Brunswick employees, in truth, it is alleged that Brunswick did not have such a commitment but made such representations as an inducement because Brunswick knew that suppliers would not commit to building in Mexico unless such a commitment were represented. In truth, it is alleged that Peter Larson, President of Brunswick, as of the time BCE was being induced into the relationship, had already undertaken third party appraisal of asset for write downs, and had investigated and was prepared to and taking the procedural steps and actions do all that was necessary to write down 178,000,000 in the fourth quarter of 1999 on the basis of impaired value of good will. That Brunswick Financial Committee and Chief Financial Officer along with Peter Larson, even prior to inducing BCE to come to Mexico, had already discussed, evaluated and were analyzing the exiting of the bicycle market as they had done in 1998 regarding bowling equipment which also faced effect from the Asian economic situation and where there was a charge

off of 60 million dollars for a twenty million dollar tax savings. Furthermore, the representation of along-term commitment of at least three years in Mexico was not true because Brunswick Corp through it's CEO and CFO were evaluating the Mexican operations in connection with the earning and the company prepared contingent emergency plans regarding the operation if income was not as adequate as they expected. It is alleged that the pressure from the Asian market existed on all products marketed by Brunswick and had in fact caused Brunswick to evaluate write offs of investments in the bicycle manufacturing industry as early as June of 1998. Furthermore, it is alleged that Peter Larson, the Board of Directors and the CFO had undertaken reports and analysis regarding offsetting income increases for 1999 that were in the neighborhood of three hundred thirty million dollars. That additionally, Brunswick had for some time been evaluating the divestment of the bicycle manufacturing as part of Brunswick's evaluation of its discontinuation of its out door operations, which included bicycles. During and prior to the time the promises of a "long-term" commitment was made to BCE, the Brunswick tax vice president and CEO Peter Larson were already planning on how they could write off the $190,000,000 dollar Roadmaster investment which consisted primarily of goodwill and divest from the market because of competitive pressure from Asian markets concerning all products where there was competition with Asia.

38. It is alleged that while the President of the bicycle operations was recruiting companies such as BCE to move to Mexico, Brunswick President Peter Larson and the CFO were in the process of closing the operation and writing off the investment based upon information and advice obtained from the Arthur Anderson accounting firm as part of an extensive auditing and consulting report involving the Mexican operation and the bicycle business. Even though the President of Brunswick, the CFO, Judith Zelisko, Victoria Reich and the board of directors were aware that the operation was being

divested, they allowed the bicycle division to continue in their efforts because they had to have a factual support for their write off in connection with the tax analysis of the business plan concerning feasibility and valuation. The decision to lay off 750 workers at the two plants in Mexico and 325 employees in the plant at Olney as part of the exit from manufacturing the bicycle market was evaluated, reported upon, analyzed and proposed well in advance of the notice on January 13, 2000.

39. These acts, efforts and true intention and direction of Brunswick were concealed by Brunswick Corporation from BCE . The option, the decision and the fact that Brunswick was making efforts toward this option of divestment was concealed and replaced with a misrepresentation that they were committed to manufacturing bicycles in North America for the long-term. Long-term meaning, as used by Brunswick employees and accountants, to be at least three years. It is furthermore alleged that Peter Larson, President of Brunswick, and the Board of Directors had already determined to exit the bicycle business in January of 2000, but reported publicly that Brunswick was only exiting manufacturing. This misrepresentation was made so as to avoid loss and disruption in production because suppliers could have charged any price to recover investment because Brunswick still had substantial contracts with Wal-mart that it had to meet.

40. That Peter Larson, President of Brunswick, the CFO of Brunswick and the Board of Directors knew that there was no "long-term" commitment and that the other representations identified herein regarding Mexico were not true. They also knew about competition from China. They also knew that they were evaluating the profitability of Mexico and if it was not making their expected return, that they would divest the operation, take the write off as they had done in 1998 under similar circumstances. However they also knew that unless suppliers were told there was a long-term commitment

there would be no supplier willing to build in Mexico which meant no NAFTA saving, no JIT productions and an assortment of other higher costs resulting in lower profits. Therefore the misrepresentations were allowed to see if profits could materialize and if not, to justify the write off to both tax authorities and to the stock holders.

41. BCE had no knowledge that the representations made were not true either at the time they were made or at the time of reliance upon the promises and representations by BCE. BCE also relied upon the repeated promises by Brunswick individuals of the Bicycle division, that "you can trust us." BCE had an expectation of utmost honest from Brunswick who had entered into and offered the "vender partnership" and BCE had an expectation and reliance upon Brunswick to have the level of honesty and fair dealing expected of a partner.

42. That Brunswick was economically motivated to get suppliers to move to Mexico for the reasons stated herein and that Brunswick executives Peter Larson, the CFO and the Board of Directors had an intent and a reasonable expectation that BCE and/or others would act on the misrepresentations and concealed information, described herein, such as to cause BCE and others, to detrimentally change their position by making substantial investments into Mexico for production to meet Brunswick's needs and wants.

43. That BCE was prejudiced and damaged by reliance upon the misrepresentation and/or concealment by Brunswick and "but for" the misrepresentations would not have so acted and invested millions of dollars in a production facility in Mexico.

THIRD CAUSE OF ACTION FOR QUANTUM MERRUIT AND/OR SUBSTANTIAL PERFORMANCE

(As against Brunswick Corporation and Does 1-50)

44. BCE fully performed under the agreement alleged in paragraphs 7-25 herein except for as may have been excused by the conduct of Brunswick. The factory was built after considerable investment of time, energy and money and BCE was able to and did in fact have the ability to meet the production needs of Brunswick that had been required by Brunswick.

45. BCE by so undertaking, as described herein, performed a service to benefit the defendant. In fact, only Brunswick benefited. The factory had no use other than as to meet the demands of Brunswick and it was specifically created to the needs, wants and expectations of Brunswick.

46. That BCE had an expectation in compensation for the services provided and the capital invested, and the work was not performed gratuitously.

47. As identified, in this complaint and incorporated hereat, Brunswick accepted the services and action of BCE in building a facility and operation and providing the technical know how to supplies parts needs by Brunswick for production in Mexico and meeting NAFTA and used the services for their benefit and received millions of dollars in NAFTA savings and other production savings associated with having a parts supplier in Mexico.

48. That the contract between BCE and Brunswick was an oral agreement, factually premised on express agreement as described in this complaint and incorporated thereat and such contract would exist also as implied in law because of the knowledge of the action and services by BCE and the acceptance of such services by Brunswick. It was not just the product supplied that they accepted, it was a facility built for

their practically exclusive use, technology and technique, to meet Brunswick specifications and demands. That all of the work and action was undertaken, designed, produced and made ready under the approval of Brunswick so as to be able to manufacturer parts in Mexico, on short lead times, according to Brunswick needs for their product needs for at least the next three years.

49. That should it be held that no contract exists, because of the statute of frauds, a position BCE strenuously opposes and believes legally inapplicable, that fairness and equity require the application of the doctrine of quantum Merruit and/or substantial performance entitling the plaintiff to fair and adequate compensation for the reasonable value of services and other damages as allowed by law arising from BCE actions which resulted in benefits to Brunswick of millions of dollars in tax savings, the benefit from supplying product until Mexican operations closed, the benefit in reduced lead time problems, increases in JIT performance, NAFTA and other reduced costs, and provided support of tax charge offs of $178,000,000 to receive substantial tax saving.

Fourth Cause of Action for Fraud and Deceit
(As Against Brunswick Corporation and Does 1-50 Inclusive)

50. Incorporated hereat, as though set out in full are paragraphs 1-6, 7-25, 26-43, and it is alleged that the misrepresentation regarded false statements of material past and/or existing fact as it relates to the misrepresentations: that Brunswick had, at the time of entering into the agreement and reliance, a long-term commitment to manufacturing bikes in North America for at least three years; that Brunswick had a corporate resolve and was financially prepared, at the time of entering into the agreement and reliance to deal with the global economy concerning Asian competition; that Brunswick had a 15 million dollar fund to help Asian Companies

come to Mexico; that would be a "vendor partner" with BCE, that the commitment to Mexico came from the highest ranks in the company,

51. That Defendant Brunswick, as identified in paragraphs 37 though 42, as to, at least those identified individuals, did have knowledge that the representations were being made through the reporting chain of Brunswick and communications from Jim Coninx to his superior at Brunswick Corporation. That as late as the day before the announcement was made that manufacturing operations would be closed in North American, the individuals in the bicycle division were still out attempting to recruit suppliers to come to Mexico and promising that it was a long-term commitment by Brunswick and then the investment would be justified by the business that Brunswick promised them. This misrepresentation was made for a considerable time after initiation of the decision to close the operation had begun by Peter Larson and other Brunswick executives, including, but not limited to Judith Zelisko, Victoria Reich, and consulting and auditing individuals at Arthur Anderson Company.

52. These misrepresentations, known to be false, and acts of concealment directed by executives within the company such as Peter Larson, Judith Zelisk, Victoria Reich and Jim Coninx, who as the president of the division and Chief Financial Officer, were undertaken with knowledge that the company had already made the decision to end manufacturing in North America and exit the bicycle business. These misrepresentations and acts of concealment of known fact were perpetrated in order to reduce risk and costs associated with the decision to write off the Roadmaster goodwill and also concerning risks with suppliers and/or to avoid jeopardizing Brunswick's ability to meet their outstanding contractual relationships with Walmart, Inc.

53. The acts of these identified individuals on behalf of Brunswick were done with the intent to induce BCE, and

others, to act by investing in Mexico and then the misrepresentation about only ceasing manufacturing in North America, was so that suppliers would continue producing and working with Brunswick, even though Brunswick was in truth exiting the bicycle market as part of an overall plan for divestment of the out door recreation division that had been undertaken, evaluated and commenced at a time prior to the inducement to BCE to invest in Mexico and the misrepresentations were made as alleged herein.

54. That the representations of the employees and agents identified herein made the representations based upon false information and representations conveyed by Brunswick's upper executives and management and that the bicycle division representatives identified herein, were allowed to disseminate false representations. Alternatively, as to some representations, the employee and agents of Brunswick may have been made in reckless disregard of whether they were true or false. The plaintiff further claims that the defendant made the statements with the intent to induce the plaintiff to act by making the investment in the Mexico project and the plaintiff did expend substantial time, energy and monies as a result such that the plaintiff lost several millions of dollars as a result of the reliance. Had Brunswick advised BCE of the lack of commitment, BCE could have supplied the identical product at a lower price with manufacturing occurring in China. Only Brunswick benefited by BCE investing the capital into manufacturing in Mexico and not only did Brunswick benefit in production advantages such as "just in time" ability, but also saved millions in NAFTA savings due to the products manufactured by the plaintiff which enabled the defendant to meet NAFTA requirements.

55. BCE further claims that they reasonably believed the statements and in justifiable reliance on the truth of the statements by the employee agents, Kevin Kabbes, Bob Guinn, James Connix, and Howard Atkenson and others who

made the representations alleged herein and incorporated in full hereat, especially since the characterization of the agreement as a "partnership" was from Brunswick. BCE had a right and expectation to receive that level of utmost honesty associated with a representation and agreement by Brunswick that they were "vendor-partners" as alleged herein, and incorporated hereat.

56. The misrepresented condition was an essential element to the transaction between BCE and Brunswick and, "but for" the misrepresentations, BCE would not have committed to the project or invested the time, energy and resources to the. Mexican project.

57. BCE alleges that there was a special relationship of trust between BCE and Brunswick created out of the "vender/partnership" agreement. Furthermore, Brunswick had a duty to not conceal material and relevant information as identified herein because of the partnership agreement.

58. It is alleged that BCE did knowingly conceal from and/or withhold from the plaintiff the facts generally stated regarding the Defendant Brunswick's true level of commitment to the Mexican project which was substantially different than that communicated to plaintiff and others to get inducement and reliance on the project and to invest time, energy and money as plaintiff did resulting in millions of dollars of losses when Brunswick exited the manufacture of bicycles. BCE furthermore claims that Brunswick concealed and/or withheld the fact(s) with the intent to deceive the plaintiff and to induce BCE to make a commitment to the vendor/partnership agreement investing considerable time, energy and money into developing an operation in Mexico to further Brunswick's financial plan and objectives. BCE furthermore alleges that BCE did in fact did undertake a substantial commitment of time, energy and commitment to the Mexican manufacturing project of defendant Brunswick Corporation in justifiable reliance upon the facts as they knew

them and as they were communicated and represented by the corporate defendant Brunswick Corporation through its agents as identified herein and incorporated hereat.

59. The plaintiff further claims that they sustained damages as a result of the concealment and/or withholding of (a) material fact(s) by the Brunswick.

60. As a result of the misrepresentations and concealment by Brunswick, BCE suffered damages as stated herein and as to be provided and amended hereafter and that the conduct of Brunswick was willful and wanton, violated the trust and/or confidence of BCE and that BCE is entitled to an award of exemplary damages in an amount that will serve to punish Brunswick and to deter Brunswick and others from similar conduct.

WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

1. General damages, according to proof and within jurisdictional limits of this Court;
2. Punitive damages in an amount to be determined by the trier of fact;
3. Damages for cost of suit incurred herein;
4. Prejudgment interest, according to proof; and
5. Such other relief as this Court deems just and proper.

DATED: October 10th, 2002.

/s/ Steven A. Leahy
STEVEN A. LEAHY
Attorney for Bicycle Components Express d/b/a SOLEUS

Steven A. Leahy
150 North Michigan Avenue, Suite 1100
Chicago, Illinois 60601
312-664-6649
Attorney No: 6273453

J. Grant Kennedy (csb # 103698)
The Law Offices of J. Grant Kennedy
141 Duesenberg Drive, Suite 10
Westlake Village, CA. 91362
800-374-4772
Specially Appearing Pro Hac Vice

State of Illinois)

CERTIFICATE OF ATTORNEY

I, the undersigned, a licensed attorney in the state of Illinois, state that I caused a copy of the foregoing "Plaintiff's Second Amended Complaint" to be served upon:

Mr. David J. Chizewer
Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, LTD.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603

by enclosing a true and correct copies of same in a properly addressed stamped and sealed envelope and by depositing in a U.S. Mail Chute at 150 North Michigan Avenue, Illinois 60602, at or before 5:00 p.m. this 10th day of October, 2002. I declare under penalty of perjury that the forgoing is true and correct. Executed this October 10, 2002.

/s/ Steven A. Leahy
STEVEN A. LEAHY

Steven A. Leahy, Attorney at Law
150 North Michigan Avenue
Suite 1100
Chicago, Illinois 60601
312-664-6649
Attorney No: 6273453